

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket 92-259

COMMENTS OF THE SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION OF AMERICA

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I. INTRODUCTION.

The Satellite Broadcasting and Communications Association of America (SBCA) is pleased to submit to the Commission its comments regarding the implementation of the retransmission consent provision of the Cable Television Consumer Protection and Competition Act (the "Act"). While the must-carry/retransmission consent section of the Act is designed to apply to cable operators, certain satellite carriers may also be affected by its provisions. Our request is that the Commission make clear the operating rules for retransmission consent, to the extent that it may apply to satellite carriers in accordance with the Act because, for the moment, we respectfully suggest that its application has not been sufficiently spelled out. As a sidenote, SBCA was vigorously opposed to the imposition of retransmission consent on HSD delivery because the real issue it addresses is must-carry which as we point out is not relevant to satellite broadcasting.

The SBCA is the national trade organization which represents the satellite broadcasting industry. The major membership segments include the satellite operators, equipment manufacturers, retailers and distributors, program services, and the satellite carriers which uplink and market retransmitted broadcast signals directly to HSD consumers in accordance with the Satellite Home Viewers Act of 1988. In that vein, the SBCA's interest in this Rulemaking lies in its general concern that the carriage of retransmitted broadcast programming which has proven so popular among HSD subscribers is not disrupted by retransmission consent procedures which are burdensome or detrimental to the consumer's ability to gain access to "superstation" signals.

II. DEFINITION OF "MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR."

The Commission asks for comment on the "scope of the definition" of a "multichannel video programming distributor." Its purpose is to determine which type of entity in the chain of program distribution should be responsible for the retransmission consent obligation. The Commission further states that it would be logical for that obligation to inure to that link in the chain which deals directly with the public.

Our only purpose in raising this issue in the context of satellite program distribution direct-to-the-home is to point out to the Commission that in the strict parlance of a "distributor in the

chain that interacts directly with the public," a HSD consumer can purchase a subscription to a satellite retransmitted programming service from any number of retail sources. Even though only one entity - the satellite carrier - uplinks the signal for which retransmission consent might ultimately be required, pays the copyright fee for its distribution, and delivers the signal directly to the consumer's dish, subscriptions to the service may be purchased through system retailers, third party program "packagers," as well as by the carrier itself, all of which "interact with the public."

A review of the retransmission consent section of the Act indicates that the Congress refers to the "retransmission" of a signal to a satellite home, and not to the "distribution." Since the physical act of "retransmission" is performed by only a single party, and may or may not construe the actual retail distribution of the signal, we urge the Commission to re-examine the definition of "multichannel video programming distributor" as it uniquely applies to HSD delivery. In the determination of which entity has the responsibility for acquiring the necessary consent, we would recommend that only the "multichannel video programming distributor" who uplinks the signal bear the requirement.

III. IMPLEMENTING RETRANSMISSION CONSENT.

The SBCA requests that the Commission, as it promulgates the rules

governing retransmission consent, make plain the consent procedure required of a satellite carrier who wishes to uplink a "superstation" not retransmitted prior to May 1, 1991, for delivery to HSD systems. The Commission has accurately stated that, "retransmissions of television signals...whose satellite carriage began after May 1, 1991, are not exempt from retransmission consent requirements" (para. 47). While at the moment we do not believe that there exist any instances requiring a satellite carrier to negotiate for consent - i.e. carriage of a "superstation" which was not being retransmitted on May 1, 1991 - clarification of procedural action in the event consent is required in the future is important.

The Commission has gone into exquisite detail in prescribing the interaction between retransmission consent and cable carriage obligations imposed by new Section 614 of the Act. It states that, "Because commercial television stations are required to choose between retransmission consent and must-carry rights, the implementation of the new Section 325(b) and the new Section 614 must be addressed jointly" (para. 48). However the entire process so described applies only to the cable industry where carriage of local broadcast signals is the primary focus of the retransmission consent regime. On the other hand, while satellite delivery of "superstations" to HSD consumers is potentially subject to retransmission consent requirements beyond the May 1, 1991, grandfather, there are no must-carry implications for HSD satellite

retransmissions.

It is important that the Commission make this distinction as it effectuates its retransmission consent rules. Satellite carriers deliver "superstation" signals to HSD subscribers on a national basis only. It is obviously not possible to uplink an independent broadcast signal solely for local distribution in a single locale. Thus must-carry is not a valid option for a broadcast station to elect with regard to satellite carriage for HSD delivery. However, lacking any definitive direction from the Commission regarding a retransmission consent process between carrier and broadcaster, it appears that the process applicable to cable operators could be operative by default.

In order to overcome this purely administrative hurdle then, a new rule could simply iterate that retransmission consent to uplink a non-exempt superstation by a satellite carrier should simply entail a market place negotiation between station and carrier. The agreement could be filed for the record at the Commission if desired. Beyond that, there should be no misunderstanding as to which facets of the retransmission consent regime apply to HSD.

IV. DEFINITION OF NETWORK.

The Commission proposes to fashion a definition for the term "network" for the purposes of applying it to the must-carry

provisions. The NPRM calls for a definition embodying a "substantial duplication concept" and then asks whether it should be constructed around network interconnected programming or based on a new definition entailing the amount of duplicative programming involved. While HSD delivery would not be affected by the role of a duplicative concept in the framework of must-carry, it is important that any new definition of "network," if one is developed by the Commission, be utilized solely in the context of this proceeding.

As the Commission knows, the 1988 Satellite Home Viewers Act contains an established and specific definition of "network" for copyright purposes, as it applies to the HSD delivery of network signals to "unserved households." That definition revolves around the statutory language contained in Section 111(f) of the Copyright Act which describes a "network station" as, "a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States, providing nationwide transmissions, and that transmits a substantial part of the programming supplied by such networks for a substantial part of that station's typical broadcast day" (17USCA111[f]). The entire copyright compensation construct for HSD delivery of network stations is based on the 111(f) definition and constitutes an important definitional and geographical distinction between the HSD delivery of network and superstation signals.

While we do not attribute to the Commission any intent to implicate the 111(f) definition with that within the must-carry regime, SBCA strongly urges the Commission to make abundantly clear that whatever definition it chooses to adopt for "network," it be only for purposes of the Commission's implementing must-carry and retransmission consent.

V. CONCLUSION.

The SBCA recommends that the Commission re-examine the following aspects of retransmission consent as it applies to satellite retransmissions of broadcast signals:


1) The definition of "multichannel video programming distributor" as the entity which "interacts directly with the public" consists of multiple parties. The Commission should cite which entity has the obligation for obtaining retransmission consent. SBCA recommends that the obligation belongs with the party uplinking the signal.

2) SBCA recommends that the procedure for acquiring retransmission consent by a carrier should be conducted in the open market place. The Commission can choose whether or not it desires the agreement to be maintained for the record.

3) Due to the importance of the definition of "network" in the

Copyright Act, and the restrictions it places on HSD delivery of retransmitted broadcast signals, SBCA alerts the Commission to the importance of differentiating between the Copyright Act definition and that which it develops as part of this rulemaking.

The Commission may view these items as purely "technical" in the sense that their significance or meaning may already be plain from the statute or the NPRM. Obviously however they are of significant import to the satellite carriers and the subscribers they serve. In crafting rules relating to these complex issues, the Commission should be cognizant of the unique circumstances of delivery technologies other than cable television in order to best address the many public policy ramifications of this proceeding.

A handwritten signature in dark ink, appearing to read "Andrew R. Paul", is written over a horizontal line.

Andrew R. Paul

Senior Vice President